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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 K & SD ENTERPRISES, INC., *et al.*,

10 Plaintiffs,

11 v.

12 SHELL OIL PRODUCTS, INC. US, *et*
al.,

13 Defendants.

Case No. C05-1972RSL

ORDER GRANTING IN PART
DEFENDANT EQUILON'S
MOTION FOR DISMISSAL OR
SUMMARY JUDGMENT

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16 This matter comes before the Court on "Defendant Equilon Enterprises
17 LLC's Motion to Dismiss or, in the Alternative, for Summary Judgment." Dkt. #14.
18 Plaintiffs filed a breach of contract suit against Equilon Enterprises LLC, doing business
19 as Shell Oil Products US (hereinafter "Equilon"). For the reasons set forth below, the
20 Court grants in part and denies in part Equilon's motion.

21 **I. FACTS**

22 The following facts are undisputed. This controversy arose out of the
23 operation and termination of a Shell gas station franchise. The parties agree that the
24 termination of the franchise is governed by the Petroleum Marketing Practices Act

1 plaintiffs had properly asserted a PMPA claim, summary judgment on the merits would
2 be appropriate. Finally, defendant requests that fees and costs be awarded for the
3 expense of defending this action. Having reviewed the memoranda, declarations, and
4 exhibits submitted by the parties,¹ the Court finds as follows:

5 **A. PMPA Preemption.**

6 The PMPA provides that “[t]o the extent that any provision of this
7 subchapter applies to the termination . . . of any franchise, . . . no State . . . may adopt,
8 enforce, or continue in effect any provision of any law or regulation . . . with respect to
9 termination . . . of any such franchise relationship unless such provision of such law or
10 regulation is the same as the applicable provision of this subchapter.” 15 U.S.C.
11 §2806(a)(1). “This section provides for preemption of *all* state law inconsistent with the
12 PMPA.” In re Herbert, 806 F.2d 889, 892 (9th Cir. 1986) (emphasis in original).

13 In order to find preemption, there must first be an inconsistency. Defendant
14 has not identified, and the Court cannot discern, any inconsistency here. Plaintiffs seek
15 to enforce a contract that is entirely consistent with the PMPA. Plaintiffs’ complaint
16 alleges that defendant breached the contract by terminating the franchise in the absence of
17 one of the “good cause” justifications set forth in the contract and permitted under the
18 PMPA. First Amended Complaint at ¶ 38. Plaintiffs’ invocation of state law through a
19 breach of contract claim mirrors the PMPA because the “good cause” justifications in the
20 contract precisely echo those set forth in the statute. In addition, both the original
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22 ¹ Neither party has provided documentary evidence to support the summary charts
23 submitted as evidence in this matter. Nevertheless, the Court has considered all of the
24 documents submitted based on the assumption that the parties will be able to authenticate
25 the underlying documents and that such documents would be subject to one or more of
the exceptions to the hearsay rule.

1 Complaint (Dkt. # 1 at ¶ 1) and their First Amended Complaint (Dkt. # 12 at ¶ 1) state
2 that the “action arises under the [PMPA].” Plaintiffs’ complaint is not inconsistent with
3 the PMPA and therefore is not preempted.

4 **B. Individual Plaintiffs’ Standing.**

5 Defendant points out that, contrary to the unsupported allegations of the
6 complaint, the Lease and Agreement were between it and K & SD, not the individual
7 plaintiffs. The individual plaintiffs have not responded to this argument or otherwise
8 shown that they have standing to assert a breach of contract or PMPA claim against
9 Equilon. The individual plaintiffs’ claims are, therefore, dismissed.

10 **C. Summary Judgment under the PMPA.**

11 On a motion for summary judgment, the Court must “view the evidence in
12 the light most favorable to the nonmoving party and determine whether there are any
13 genuine issues of material fact.” Holley v. Crank, 386 F.3d 1248, 1255 (9th Cir. 2004).
14 “[I]f a rational trier of fact might resolve the issues in favor of the nonmoving party,
15 summary judgment must be denied.” T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors
16 Ass’n, 809 F.2d 626, 631 (9th Cir. 1987).

17 Based on the record currently before the Court, there appears to be a
18 genuine issue of fact regarding the cause of K & SD’s repeated failure to keep on hand a
19 sufficient amount of one or more type of gas for resale to the public. Under the PMPA,
20 “[t]he term ‘failure’ does not include . . . any failure for a cause beyond the reasonable
21 control of the franchisee[.]” 15 U.S.C. §2801(13). Whether the outages were beyond
22 K & SD’s control is a question for the trier of fact. There also appears to be a genuine
23 issue regarding defendant’s justification for termination. The relevant contracts and the
24 PMPA authorize termination for the “failure to operate [the gas station] for 7 consecutive
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1 days, or such lesser period which under the facts and circumstances constitutes an
2 unreasonable period of time". No outage lasted seven consecutive days, nor is it clear
3 that K & SD ever failed to operate the gas station in its entirety. Whether plaintiff's
4 various failures to maintain one or more types of gas, taken together or individually,
5 constituted a "failure to operate" or lasted "an unreasonable period of time" are questions
6 to be decided by the trier of fact. Equilon is not entitled to summary judgment on
7 plaintiff's claim that Equilon's termination of the Lease and Agreement violated the
8 contracts and/or the PMPA.

9 **D. Attorney's Fees.**

10 Defendant's request for attorney's fees is denied as premature.

11 **III. CONCLUSION**

12 For all of the foregoing reasons, defendant's motion to dismiss or, in the
13 alternative, for summary judgment is GRANTED in part and DENIED in part. The
14 claims of individual plaintiffs Jasvir Singh Dhillon, Rupinder Kaur, Harjinder Singh, and
15 Kashmir Singh Khalsa are dismissed. Equilon's motion is denied as to K & SD's claims
16 and the request for attorney's fees.

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18 DATED this 14th day of June, 2006.

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21 Robert S. Lasnik
22 United States District Judge
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